

SUPERIOR COURT
OF THE
STATE OF DELAWARE

E. SCOTT BRADLEY
JUDGE

SUSSEX COUNTY COURTHOUSE
1 The Circle, Suite 2
GEORGETOWN, DE 19947

March 31, 2010

Henry A. Duhadaway
SBI No. 0009
James T. Vaughn Correctional Center
1181 Paddock Road
Smyrna, DE 19977

Re: State of Delaware v. Henry A. Duhadaway
Cr.A. No. S01-06-0396, 0423 - Def. ID No. 0106013189A
Motion for Postconviction Relief

Dear Mr. Duhadaway:

This is my decision on your most recent Motion for Postconviction Relief. You pled nolo contendere to Rape in the Second Degree and Unlawful Dealing in Child Pornography on February 22, 2002. I sentenced you to serve a total of 25 years at Supervision Level V, suspended after serving 15 years at Supervision Level V for declining levels of probation.

You were represented by Ronald D. Phillips, Esquire. You now allege that Phillips did not effectively represent you because he (1) failed to advise you of your right to file an appeal after you entered your plea, (2) failed to tell me that you were under the influence of various medications while you entered your plea, and (3) failed to retain an expert to examine your computer. Phillips filed an affidavit responding to your allegations. Given the nature of your allegations, I have decided that it is not necessary to have a hearing.

Your claims of ineffective assistance of counsel must meet the two-prong test set

forth in *Strickland v. Washington*.¹ In the context of a guilty plea challenge, *Strickland* requires a defendant to show that: (1) counsel's representation fell below an objective standard of reasonableness; and (2) counsel's actions were so prejudicial that there is a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial.

I dealt with your second and third allegations in my decision on your first Motion for Postconviction Relief.² That leaves your allegation that Phillips did not tell you that you had the right to file an appeal with the Delaware Supreme Court after you entered your plea. Phillips acknowledges that he did tell you that you had the right to file an appeal. However, he adds that he did not tell you this because you waived your right to file an appeal when you entered your plea. Phillips is correct. This was explained to you in writing and verbally when you entered your plea. On the Truth-In-Sentencing Guilty Plea Form you were asked to answer a number questions. The following is one of the questions:

Do you understand that because you are pleading guilty you will not have a trial, and you therefore waive (give up) your constitutional right:

1. To be **presumed innocent** until the State can prove each and every part of the charge(s) against you beyond a reasonable doubt;
2. To a **speedy and public trial**;
3. To **trial by jury**;
4. To **hear and question the witnesses** against you;
5. To **present evidence** in your defense;
6. To **testify** or not testify yourself; and,
7. To **appeal** to a higher court? (Emphasis added)

You answered "Yes" to this question and signed your name at the bottom of the form.

¹ 466 U.S. 668, 1045 S. Ct. 2052, 80 L.Ed. 2d 674 (1984).

² *State v. Duhadaway*, 2002 WL 32071666 (Del. Super. June 19, 2002)(corrected).

I also went over this when you entered your plea. The following is an excerpt from your plea colloquy:

The Court: Did you review and sign the truth in sentencing guilty plea form in this case?

The Defendant: Yes, I did.

The Court: You filled out this form except for the questions Mr. Phillips talked about?

The Defendant: Yeah.

The Court: Do you see those seven rights listed on this form?

The Defendant: The what?

Mr. Phillips: The seven rights listed one through seven. We went through the seven rights that you give up by entering the plea of nolo contendere.

The Defendant: Yeah.

The Court: Let's go over them, Mr. Duhadaway. You are presumed innocent until the State can prove each and every part of the charges against you beyond a reasonable doubt; do you understand that?

The Defendant: Yeah.

The Court: You have the right to a speedy trial and a public trial; do you understand that?

The Defendant: Yeah.

The Court: You have the right to trial by jury.

The Defendant: Yeah.

The Court: You have the right to hear and question the witnesses against you.

The Defendant: Yeah.

The Court: You have the right to present evidence in your defense; you have the right to testify or not testify.

The Defendant: Yeah.

The Court: You have the right to take an appeal to a higher court.

The Defendant: Yeah.

The Court: Do you understand all those rights?

The Defendant: Right.

The Court: Do you have any questions about those rights?

The Defendant: By the tape that the State has, Your Honor, the evidence the State has, it is a no win -- according to my attorney, there is no way he can win this case, no way he can prove that he altered the time on the computer, so - -

The Court: Okay, that is one thing, but do you understand the seven rights that we just went over?

The Defendant: Yes.

The Court: Do you understand you are waiving those rights by entering this plea?
The Defendant: Yes.
The Court: Do you understand there will not be a trial because you are entering this plea?
The Defendant: Right.
The Court: Do you still wish to enter this plea?
The Defendant: Yes.³

There is no doubt that you understood that you had waived your right to file an appeal with the Delaware Supreme Court by pleading nolo contendere. Thus, there was nothing more for Phillips to tell you. I also note that you do not state what issues you would have raised on appeal if you had filed an appeal. Your allegations of ineffective assistance of counsel are without merit.

Conclusion

Your Motion for Postconviction Relief is DENIED.

IT IS SO ORDERED.

Very truly yours,

E. Scott Bradley

cc: Prothonotary's Office
Paula T. Ryan, Esquire
Ronald T. Phillips, Esquire

³ Nolo Contendere Plea Transcript at 10-12.